

DOJ Announces First Settlement to Resolve Alleged FCA Violations by a PPP Borrower and Its CEO

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On January 12, 2021, the U.S. Attorney's Office for the Eastern District of California announced the first civil settlement resolving alleged violations of the False Claims Act ("FCA") based on false statements made by a borrower and the company's Chief Executive Officer in loan applications under the Paycheck Protection Program ("PPP").^[1] Approximately 5.2 million loans worth approximately \$525 billion were issued to small businesses under the PPP in 2020,^[2] providing much-needed relief to struggling businesses during the COVID-19 crisis. However, as discussed in our earlier articles on the subject^[3] and as illustrated by this recent settlement, the PPP and other COVID-related response and relief programs expose both companies and individuals to heightened scrutiny under the FCA – one of the government's most powerful civil enforcement tools. As the PPP re-opens to issue another \$284 billion in loans,^[4] the DOJ is expected to continue using the FCA to pursue both businesses and individuals who seek to defraud federal programs. Accordingly, those seeking to participate in the PPP and other pandemic-related response and relief programs should implement appropriate safeguards to ensure compliance with all requirements and thereby mitigate the risk of becoming the target of an FCA investigation and related litigation.

According to the DOJ's press release and the settlement agreement,^[5] SlideBelts Inc., an internet retail company that had filed for Chapter 11 bankruptcy in August 2019, and Brigham Taylor, the company's CEO, CFO, and President, made false statements on PPP loan applications. In particular, during the pendency of the bankruptcy proceeding, the company filed three separate PPP loan applications in three separate states. In each application, which was certified by Taylor, the company falsely stated that it was not "presently involved in any bankruptcy" in order to influence the federally insured institutions to grant, and for the Small Business Administration ("SBA") to guarantee, a PPP loan.^[6] As a result of these referenced false statements, SlideBelts received a loan for \$350,000. Based on this alleged misconduct, the DOJ contends in the settlement agreement that SlideBelts and Taylor are liable for damages and penalties totaling \$4,196,992 for violations of the FCA and FIRREA.^[7] SlideBelts and Taylor did not concede liability, but did admit, acknowledge, and accept responsibility for the facts set forth in the settlement agreement. SlideBelts also repaid the \$350,000 loan in response to demands by the SBA. Pursuant to the settlement agreement and in consideration of SlideBelts' and Taylor's financial condition, the DOJ agreed to resolve the matter based on, among other things, an agreement by SlideBelts and Taylor to pay \$100,000, of which \$65,000 will be paid by SlideBelts, and \$35,000 will be paid by Taylor.

In the wake of the new round of PPP loans and other COVID-related response and relief programs, the DOJ will continue to utilize the FCA to ferret out fraud against government programs and hold businesses and individuals accountable for wrongdoing. It is critical to keep in mind that the FCA imposes liability, and the potential for treble damages and steep penalties, not only when businesses and individuals have actual knowledge that their statements are false, as alleged here, but also where a business or individual has deliberately ignored or shown a “reckless disregard” for the truth or falsity of statements. It is therefore imperative that those seeking to participate in the PPP and other government-funded response and relief programs have a thorough understanding of all eligibility criteria and restrictions. To minimize the risk of being at the center of an FCA investigation or becoming a defendant in a related litigation, companies should, as discussed in earlier publications,¹¹ implement appropriate safeguards to ensure the accuracy of all statements made in connection with program participation and strict compliance with all program eligibility requirements and limitations.

If you have additional questions or need further assistance, please reach out to [Suzanne Jaffe Bloom](#), Co-Chair - White Collar, Regulatory Defense, and Investigations Practice; [Cristina Calvar](#) - Litigation Partner; [Michelle Tuma](#) - [Litigation Associate](#), or your Winston relationship attorney.

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¹¹ The DOJ press release is available here: <https://www.justice.gov/usao-edca/pr/eastern-district-california-obtains-nation-s-first-civil-settlement-fraud-cares-act>.

¹² Small Business Administration, “SBA and Treasury Announce PPP Re-Opening; Issue New Guidance” (Jan. 8, 2021), <https://www.sba.gov/article/2021/jan/08/sba-treasury-announce-ppp-re-opening-issue-new-guidance> (“According to Treasury Secretary Steven T. Mnuchin, the Paycheck Protection Program has successfully provided 5.2 million loans worth \$525 billion to America’s small businesses.”) (internal citations omitted) [hereinafter “SBA: New Guidance”].

¹³ See “SBA Guidance Addresses FCA and FIRREA Liability for PPP Lenders,” Client Alert (May 4, 2020), <https://www.winston.com/en/thought-leadership/sba-guidance-addresses-fca-and-firrea-liability-for-ppp-lenders.html>; “Mitigating FCA Liability Risks from COVID-19 Relief Programs,” Bloomberg Law (May 6, 2020), <https://www.winston.com/images/content/2/0/v2/204436/MitigatingFCAliabilityRisksECO49129.pdf>.

¹⁴ SBA: New Guidance (“authorizing up to \$284 billion toward job retention and certain other expenses through March 31, 2021, and by allowing certain existing PPP borrowers to apply for a Second Draw PPP Loan”).

¹⁵ The settlement agreement entered into by the DOJ, SlideBelts, and Taylor is available here: <https://www.justice.gov/usao-edca/press-release/file/1352931/download>.

¹⁶ The PPP application on SBA Form 2483 asks, in Question 1, whether the applicant is presently involved in any bankruptcy. The SBA form states that if Question 1 is answered “Yes,” then the “loan will not be approved.” The SBA’s Interim Rule of April 24, 2020 states: “If the applicant or the owner of the applicant is the debtor in a bankruptcy proceeding, either at the time it submits the application or at any time before the loan is disbursed, the applicant is ineligible to receive a PPP loan.”

¹⁷ The Financial Institutions Reform, Recovery and Enforcement Act of 1989 (“FIRREA”) (12 U.S.C. § 1833a) authorizes the government to seek civil penalties for violations of enumerated federal criminal statutes, including those that affect federally insured financial institutions.

¹⁸ See note 3; see also “High Court Could Expand FCA Reach in Resolving Circuit Split,” Law360 (Dec. 1, 2020), <https://www.winston.com/en/thought-leadership/high-court-could-expand-fca-reach-in-resolving-circuit-split.html>; “Inside The First Paycheck Protection Program Fraud Charges,” Law360 (May 15, 2020), <https://www.law360.com/tax-authority/articles/1273295/inside-the-first-paycheck-protection-program-fraud-charges>.

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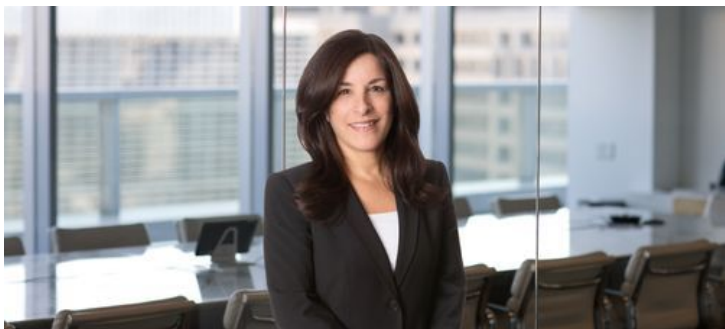
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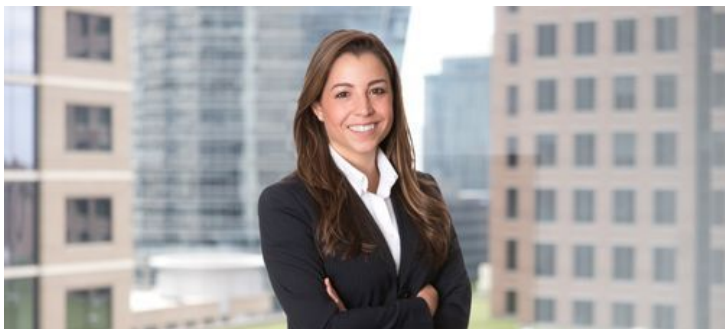
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